

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

WALLACE J. DESMARAIS, JR., On Behalf of  
Himself and All Others Similarly Situated,

Plaintiff,

v.

FIRST NIAGARA FINANCIAL GROUP, INC.,  
NATHANIEL D. WOODSON, G. THOMAS  
BOWERS, GARY M. CROSBY, GEORGE M.  
PHILIP, CARL A. FLORIO, PETER B.  
ROBINSON, CARLTON L. HIGHSMITH,  
ROXANNE J. COADY, AUSTIN A. ADAMS, and  
SUSAN S. HARNETT,

Defendants.

Case No. 1:15-cv-01226-LPS-CJB

**STIPULATION AND [PROPOSED] ORDER CONCERNING DEFENDANTS'  
PENDING MOTION TO DISMISS AND PLAINTIFF'S COUNSEL'S  
ATTORNEYS' FEES AND EXPENSES**

WHEREAS, on October 30, 2015, First Niagara Financial Group, Inc. (“First Niagara” or the “Company”) entered into a definitive merger agreement (the “Merger Agreement”), pursuant to which it will merge with and into KeyCorp, with KeyCorp continuing as the surviving corporation (the “Merger” or “Proposed Transaction”);

WHEREAS, on or about November 30, 2015, First Niagara filed a Form S-4 Registration Statement with the United States Securities and Exchange Commission (“SEC”) that contained a preliminary proxy statement for First Niagara’s stockholders (the “Preliminary Proxy”);

WHEREAS, on December 30, 2015, Plaintiff filed a class action complaint on behalf of himself and other First Niagara public stockholders against First Niagara and the First Niagara board of directors (Nathaniel D. Woodson, G. Thomas Bowers, Gary M. Crosby, George M. Philip, Carl A. Florio, Peter B. Robinson, Carlton L. Highsmith, Roxanne J. Coady,

Austin A. Adams, and Susan S. Harnett) (“Defendants”) alleging that the Preliminary Proxy contained false and misleading statements and information and that consequently Defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. §§ 78n(a), 78t(a), and United States SEC Rule 14a-9);

WHEREAS, on February 4, 2016, First Niagara filed a Schedule 14A Definitive Proxy Statement (the “Proxy”) with the SEC regarding the solicitation of stockholders to vote in favor of the Proposed Transaction and set the date for the stockholder vote to approve the Proposed Transaction for March 23, 2016;

WHEREAS, on or about January 13, 2016, Defendants filed a Motion to Dismiss (D.I. 4-5);

WHEREAS, on or about February 25, 2016, Plaintiff filed a Motion for Leave to File an Amended Complaint (D.I. 15), which was granted;

WHEREAS, on or about March 4, 2016, Plaintiff filed a Motion for Preliminary Injunction (“PI Motion”) (D.I. 20);

WHEREAS, on or about March 7, 2016, the Court scheduled a hearing on Plaintiff’s PI Motion for March 16, 2016;

WHEREAS, on March 9, 2016, First Niagara filed a Form 8-K with the SEC that contained a Supplement to the February 4, 2016 Proxy;

WHEREAS, on March 11, 2016, Defendants filed their opposition to Plaintiff’s PI Motion;

WHEREAS, Plaintiff believes that the Proxy as amended after the commencement of this Action addressed certain of Plaintiff’s allegations and the claim under Section 14(a) of the Exchange Act, and Plaintiff will not oppose Defendants’ motion to

dismiss, but instead informed Defendants' counsel that he would move the Court to approve an application by his Counsel for an award of attorneys' fees and costs on the grounds that Defendants amended the Preliminary Proxy by filing the Proxy and then the March 8, 2016 Supplement and, in so doing, mooted Plaintiff's claims in response and due to the commencement of this Action ("Mootness Fee and Expense Application");

WHEREAS, Defendants intended to oppose Plaintiff's Mootness Fee and Expense Application; and

WHEREAS, Plaintiff and Defendants have reached a compromise on the issue of a Mootness Fee and Expenses.

**IT IS HEREBY ORDERED THAT:**

1. This action is hereby dismissed with prejudice in accordance with the parties' agreement on attorneys' fees and expenses.

Dated: March 21, 2016

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**OF COUNSEL:**

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*Attorneys for Defendants*

APPROVED AND SO ORDERED:

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MAGISTRATE JUDGE CHRISTOPHER J. BURKE